



U.S. Department of Justice

United States Attorney
Southern District of New York

The Jacob K. Javits Federal Building
26 Federal Plaza, 37th Floor
New York, New York 10278

February 27, 2024

BY ECF

The Honorable Lorna G. Schofield
United States District Court
Southern District of New York
500 Pearl Street
New York, New York 10007

Re: United States v. Whitehead, S1 22 Cr. 692 (LGS)

Dear Judge Schofield:

During the trial day today, the Court provided a limiting instruction regarding the admission of evidence of uncharged loan frauds pursuant to Federal Rule of Evidence 404(b). That limiting instruction, which the parties jointly proposed (*see* Dkt. 124 at 54), inadvertently did not include “identity” among the purposes for which the jury can consider that evidence, even though identity is a permissible use for such evidence. *See* Fed. R. Evid. 404(b)(2). The Government respectfully requests that the Court clarify that the jury can permissibly consider the evidence admitted pursuant to Rule 404(b) as evidence of the identity of the person who committed the charged crimes. For that purpose, the Government proposes the following supplemental instruction:

Yesterday, I gave you an instruction about certain limited purposes for which you could consider evidence introduced by the Government regarding uncharged acts involving the submission of falsified documents in connection with loan applications. There is another purpose for which you can properly consider that evidence, which is as evidence of the identity of the person who committed the charged offenses. I remind you, however, that you cannot consider evidence of other, uncharged acts as evidence that the defendant is of bad character or has a propensity to commit crimes.

Respectfully submitted,

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